

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

DEC 17 2007 *cew*

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DEC 17 2007

MICHAEL WEST,)

Defendant-Movant,)

vs.)

Case No. 04 CR 298

UNITED STATES OF AMERICA,)

Plaintiff-Respondent,)

07C6792

MOTION TO AMEND 28 U.S.C. §2255 PETITION

COMES NOW Defendant-Movant Michael West, *pro se* and asks this Court to allow him to **AMEND** his 28 U.S.C. §2255 Petition that is now pending before the Court. If granted, the Petition will be amended to add the following ground for relief.

GROUND 5: Illegality Of The Present Sentence

The 120 Month Sentence that this Court imposed against the Defendant-Movant was with the implied credit of 36 months that the defendant was incarcerated at MCC Chicago awiting the disposition of this case. **T.Tr. at p.44 L.12-25.** A copy of the relevant portion is attached hereto and incorporated herein by reference and marked as **Movant Attachment 1.**

The Bureau of Prisons refuses to give Mr. West credit for the 36 months purporting that it violates **18 U.S.C. §3585(b).** Since the B.O.P. refuses to give Mr. West credit, even though this Court ordered it as part of his 120 Month sentence. This, in effect is ensuring that Mr. West does a 156 month sentence.

Since this Courts intention was clear from the transcript

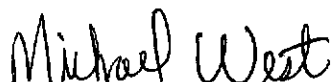
was to receive the bottom end of the guidelines for his plea of guilty, forcing him to do an extra 36 months of the sentence imposed because of 18 U.S.C. §3585(b) is against this Courts expressed intent. If this Court was forbidden to give him the credit for the time served, then this sentence must be vacated for its illegality.

C O N C L U S I O N

WHEREFORE Defendant-Movant Michael West asks this Court to allow the foregoing issue to be amended to his 28 U.S.C. §2255 Petition that is now pending before the Court.

Dated: December 10, 2007

Respectfully Submitted,



Michael West, pro se

U.S.P. Leavenworth
P.O. Box 1000
Leavenworth, KS. 66048

1 better not to recommend a specific institution. In that way,
2 he can go wherever the program is available. As long as
3 Mr. West is aware of that and he still wants to request Oxford,
4 that's fine.

5 THE COURT: Well, like I said, my recommendation is
6 going to be based primarily upon the fact that Mr. West needs
7 treatment desperately. So that will be first and foremost in
8 my mind as I make the recommendation, and I'm sure that will be
9 first and foremost with the powers that be in the prison system
10 as well.

11 THE DEFENDANT: And I got --

12 THE COURT: You'll be given credit for time served as
13 well.

14 THE DEFENDANT: I got, you said, the low end of my
15 plea?

16 THE COURT: The low end, that's 130 months.

17 THE DEFENDANT: Thank you.

18 THE COURT: All right.

19 MR. RAO: Your Honor, the Government would make a
20 motion to dismiss Counts 2 and 4.

21 THE COURT: That will be order. Good luck to you,
22 sir.

23 THE DEFENDANT: Thank you, Your Honor.

24 MR. RAO: Judge, I just want to be clear. Just for
25 the record, when you say "time served," that's as long as it